

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**AXCESS GLOBAL SCIENCES, LLC, a
Utah Limited Liability Company,**

Case No. 1:23-cv-854

Plaintiff,

JURY TRIAL DEMANDED

vs.

**MSW NUTRITION, LLC, a Texas
Limited Liability Company,**

Defendant.

**COMPLAINT FOR TRADEMARK INFRINGEMENT, FALSE ADVERTISING,
PATENT INFRINGEMENT, AND DECEPTIVE TRADE PRACTICES**

Plaintiff Axcess Global Sciences, LLC (“AGS” or “Plaintiff”) complains and alleges the following against Defendant MSW Nutrition, LLC (“MSW” or “Defendant”).

NATURE OF THE CLAIMS

1. This is an action for trademark infringement and federal false advertising under Sections 32 and 43 of the Lanham Act, 15 U.S.C. §§ 1114(a)-(b) and 1125(a)-(c), patent infringement under 35 U.S.C. §§ 1, *et seq*, and state deceptive trade practices under the Texas Deceptive Trade Practices Act, Tex. Bus. & Com. Code § 17.46 (2015).

2. Plaintiff is the owner of the registered trademark, goBHB® (Reg. No. 5261845).

See Ex. A. The goBHB® trademark is applied to products sold by the Plaintiff and its licensees that contain Plaintiff’s goBHB®-branded ingredients.

3. Plaintiff is also the owner of U.S. Pat. No. 10,292,952 (the “’952 Patent”). *See Ex. B.* The ’952 Patent includes claims for unique formulations of the health supplement Beta-Hydroxybutyrate (“BHB”).

4. Defendant makes, uses, advertises, offers for sale, and/or sells a product called Slenderella KETONES:



<https://www.mswnutrition.com/pages/ketones>

5. Defendant's advertising and product information falsely state that Slenderella KETONES contain goBHB®-branded ingredients. Defendant does not have authorization from Plaintiff to use the goBHB® mark on its products or advertising.

6. According to Defendant, Slenderella KETONES contain (1) "goBHB® Calcium Beta-Hydroxybutyrate," (2) "goBHB® Sodium Beta-Hydroxybutyrate," (3) "goBHB® Magnesium Beta-Hydroxybutyrate," and (4) "Medium-Chain Triglycerides."

SUPPLEMENT FACTS		
Serving Size: 1 Scoop (about 11.1 g) Servings Per Container: About 30		
	AMOUNT PER SERVING	%DAILY VALUE
Calories	30	
Total Fat	1.5 g	2%†
Saturated Fat	1.5 g	8%†
Total Carbohydrate	2 g	1%†
Dietary Fiber	2 g	7%
Calcium (as goBHB® calcium beta-hydroxybutyrate)	385 MG	30%
Magnesium (as goBHB® magnesium beta-hydroxybutyrate)	50 MG	12%
Sodium (as goBHB® sodium beta-hydroxybutyrate)	385 MG	17%
goBHB® Calcium Beta-Hydroxybutyrate	2.5 g	**
goBHB® Sodium Beta-Hydroxybutyrate	2.25 g	**
Medium-Chain Triglycerides	1.5 g	**
goBHB® Magnesium Beta-Hydroxybutyrate	600 MG	**

† Percent Daily Values are based on a 2,000 calorie diet.
** Daily Value not established.

<https://www.mswnutrition.com/pages/ketones>

7. Defendant's formulation of BHB infringes at least representative claims 19 and 22 of the '952 Patent.

8. Plaintiff is a direct competitor of Defendant in the dietary supplements market and specifically for BHB and ketone supplements.

9. Plaintiff has suffered harm from Defendant's unauthorized use of the goBHB® trademark in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

10. Plaintiff has suffered harm from Defendant falsely advertising that Slenderella KETONES contains Plaintiff's patented BHB formula in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff's public perception and goodwill.

11. Plaintiff has suffered harm from Defendant's infringement of the '952 Patent in the form of lost profits.

12. Plaintiff's immediate, irreparable injuries have no adequate remedy at law, and Plaintiff is entitled to injunctive relief and up to three times its actual damages and/or an award of Defendant's profits, as well as costs and reasonable attorney fees.

THE PARTIES

13. Plaintiff Axcess Global Sciences, LLC is a Utah limited liability company with a principal place of business at 2157 Lincoln Street, Salt Lake City, UT 84106.

14. Defendant MSW Nutrition is a Texas limited liability company with a registered mailing address at 5213 Bryce Ave, Fort Worth, TX 76107 and a principal place of business at 3930 Bee Cave Rd, Ste F, West lake Hills, TX 78746.

JURISDICTION

15. This matter arises under the laws of the United States, including under the Lanham Act, 15 U.S.C. §§ 1114(a)-(b) and 1125(a)-(c), and under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* Thus, the Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331. In addition, the Court has supplemental jurisdiction over Plaintiff's state claims for unlawful deceptive trade practices pursuant to 28 U.S.C. § 1367.

16. The Court has personal jurisdiction over Defendant, and venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b), at least because Defendant resides in this District, has a principal place of business in this District, has employees in this District, and has committed a substantial portion of the infringements and other misdeeds giving rise to this action from within this District.

BACKGROUND

17. Plaintiff is a leader and innovator in the field of exogenous ketones and ketogenic precursor supplement products. These products aid the body in producing and sustaining elevated

levels of ketone bodies in the blood and assist in the body's transition into nutritional ketosis. Plaintiff has patent rights in many unique formulations of BHB, including those claimed in the '952 Patent.

18. Defendant makes, uses, advertises, offers for sale, and/or sells Slenderella KETONES with a BHB formulation that infringes Plaintiff's exclusive rights in the '952 Patent.

19. Plaintiff also sells and licenses products under the trademark goBHB® that contain the same formulation of goBHB® protected by the '952 Patent. The goBHB® mark is widely known in the supplement, nutrition, and fitness industries.

20. Defendant falsely advertises that Slenderella KETONES contain goBHB®-branded ingredients and uses the goBHB® mark in its advertising without authorization from Plaintiff.

21. Slenderella KETONES is currently advertised, offered for sale, and/or sold from at least the following pages on Defendant's website:

- <https://www.mswnutrition.com/pages/slenderita-complete>
- <https://www.mswnutrition.com/pages/ketones>
- <https://www.mswnutrition.com/pages/ketones-1>
- <https://www.mswnutrition.com/pages/ketones-2>
- <https://www.mswnutrition.com/pages/ketones-3>
- <https://www.mswnutrition.com/pages/ketones-4>
- <https://www.mswnutrition.com/pages/ketones-5>
- <https://www.mswnutrition.com/pages/ketones-6>
- <https://www.mswnutrition.com/pages/ketones-7>

22. Each of these webpages (1) falsely advertises that Slenderella KETONES contains goBHB®-branded ingredients, (2) uses Plaintiff's goBHB® mark without authorization, and (3) offers for sale a product containing Plaintiff's patented formula of BHB salts and medium-chain fatty acids without authorization:



SUPPLEMENT FACTS		
	AMOUNT PER SERVING	%DAILY VALUE
Calories	30	
Total Fat	1.5 g	2%†
Saturated Fat	1.5 g	8%†
Total Carbohydrate	2 g	1%†
Dietary Fiber	2 g	7%
Calcium (as goBHB® calcium beta-hydroxybutyrate)	385 MG	30%
Magnesium (as goBHB® magnesium beta-hydroxybutyrate)	50 MG	12%
Sodium (as goBHB® sodium beta-hydroxybutyrate)	385 MG	17%
goBHB® Calcium Beta-Hydroxybutyrate	2.5 g	**
goBHB® Sodium Beta-Hydroxybutyrate	2.25 g	**
Medium-Chain Triglycerides	1.5 g	**
goBHB® Magnesium Beta-Hydroxybutyrate	600 MG	**

† Percent Daily Values are based on a 2,000 calorie diet.
** Daily Value not established.

<https://www.mswnutrition.com/pages/ketones>

23. On information belief, Slenderella KETONES have been continuously advertised, offered for sale, and/or sold on Defendant's current website (and its precursor website, www.slenderellausa.com) since at least August 2019:



<https://web.archive.org/web/20191220103335/https://slenderellausa.com/> (August 24, 2019)

24. An archived version of Defendant's website contains one example of a description for Slenderella KETONES, specifically highlighting (1) the goBHB® mark, and (2) the "patented" formula of BHB salts and medium chain fatty acids:

Slenderella KETONES is a refreshing, easy-to-use powdered drink mix featuring mineral salts of beta-hydroxybutyrate (BHB) and medium-chain triglycerides. These ingredients provide direct carbohydrate-free fuel for the brain and muscles to support energy, performance, and focus **Fuel/Energy Source - GoBHB is a patented and self-affirmed GRAS supplemental form of the BHB ketone body bound to mineral salts.** It provides an exogenous source of ketones to help achieve ketosis without a ketogenic diet **Medium-Chain Triglycerides - Slenderella KETONES provides a patented medium-chain triglyceride (MCT) powder with a high caprylic and capric acid content (C8/C10) that also contains acacia fiber, a prebiotic that may promote gut health and help optimize the gut-brain axis.**

See <https://web.archive.org/web/20200815043832/https://www.mswnutrition.com/products/slenderella-ketones> (August 15, 2020).

25. On information and belief, Defendant also advertises Slenderella KETONES and touts its infringing formula on social sites, podcasts, and other media:



<https://www.instagram.com/p/B0y5JUCnE5-/>

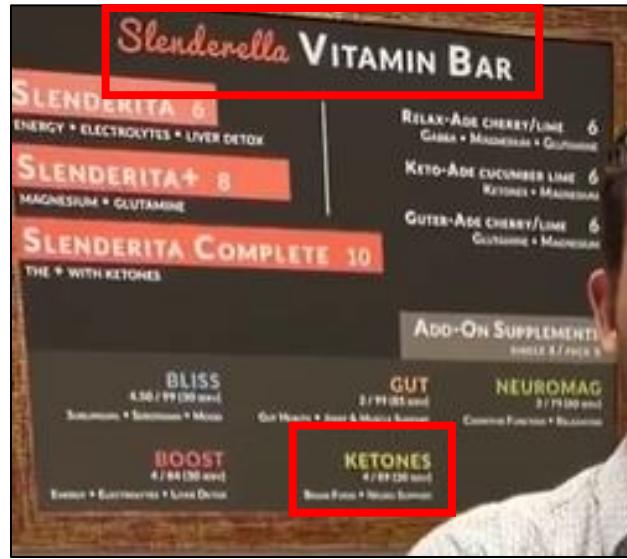
OK, so this next one, you'll love this one: KETONES . . . So this is one of our newer ones . . . Beta-hydroxybutyrate, and then it's also Sodium, Magnesium, and Calcium versions of that. Okay, and then you've got your MCT [Medium-Chain Triglycerides] as well.

<https://www.youtube.com/watch?v=f7U86eQu4Dc> (time at 1:03:07)

26. On information and belief, Defendant also makes, uses, advertises, offers for sale, and/or sells Slenderella KETONES at its brick-and-mortar store, "The Health Lounge," located at 3930 Bee Caves Rd # F, West Lake Hills, TX 78746:

<h2>The Health Lounge Menu</h2>				
Concierge Services	Vitamin Bar	Supplements	Drinks & Specials	Dailies
IV Drips				
			<u>1 pack / 4 pack</u>	
Hydration/ Single Vitamin			<u>\$129 / \$449</u>	
MSW Cocktails			<u>\$179 / \$609</u>	
*Vitamunity, Feel Good, Slenderella, Boost				
Custom Drip			<u>\$209 / \$719</u>	
Custom Drip + 1 count of NAD			<u>\$259 / \$899</u>	

<https://thehealthlounge-msw.com/pages/the-health-lounge>



www.instagram.com/p/CBReA66lEXX/

27. Defendant's infringements and other tortious conduct alleged herein have injured Plaintiff. Plaintiff's immediate, irreparable injuries have no adequate remedy at law, and Plaintiff is entitled to injunctive relief and up to three times its actual damages and/or an award of Defendant's profits, as well as costs and reasonable attorney fees.

FIRST CLAIM FOR RELIEF
Trademark Infringement
15 U.S.C. § 1114(a)

28. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

29. Plaintiff owns all rights in the federally registered goBHB® trademark (U.S. Trademark Reg. No. 5261845). *See Ex. A.*

30. Plaintiff is the owner of the goBHB® trademark by assignment.

31. Defendant uses the goBHB® trademark on the Slenderella KETONES product and its advertising, without authorization from Plaintiff:



SUPPLEMENT FACTS		
	AMOUNT PER SERVING	%DAILY VALUE
Calories	30	
Total Fat	1.5 g	2%†
Saturated Fat	1.5 g	8%†
Total Carbohydrate	2 g	1%†
Dietary Fiber	2 g	7%
Calcium (as goBHB® calcium beta-hydroxybutyrate)	385 MG	30%
Magnesium (as goBHB® magnesium beta-hydroxybutyrate)	50 MG	12%
Sodium (as goBHB® sodium beta-hydroxybutyrate)	385 MG	17%
goBHB® Calcium Beta-Hydroxybutyrate	2.5 g	..
goBHB® Sodium Beta-Hydroxybutyrate	2.25 g	..
Medium-Chain Triglycerides	1.5 g	..
goBHB® Magnesium Beta-Hydroxybutyrate	600 MG	..

† Percent Daily Values are based on a 2,000 calorie diet.
** Daily Value not established.

<https://www.mswnutrition.com/pages/ketones>

OK, so this next one, you'll love this one: KETONES . . . So this is one of our newer ones Beta-hydroxybutyrate, and then it's also Sodium, Magnesium, and Calcium versions of that. Okay, and then you've got your MCT [Medium-Chain Triglycerides] as well.

<https://www.youtube.com/watch?v=f7U86eQu4Dc> (time at 1:03:07)

32. Defendant's unauthorized use of the goBHB® mark is likely to confuse consumers, to cause mistake among consumers, and to deceive consumers into believing that Slenderella KETONES contains Plaintiff's branded ingredients, at least because Defendant uses the goBHB® mark in exactly the same manner, and on the same kinds of products, as Plaintiff and its licensees, and because Plaintiff's goBHB® mark is distinctive and famous in the health, wellness, and supplements industries.

33. Defendant's trademark infringement is willful at least because Defendant (1) repeatedly uses the full mark, exactly as registered, on its product label and advertising, (2) uses the mark for the precise class of goods for which it is registered (*see Ex. A* ("nutritional or dietary supplements in the nature of powder consisting of a beta hydroxybutyrate salt of either calcium, sodium, potassium or magnesium for use in food and dietary supplements to increase

blood ketone levels”)), and (3) even uses the trademark registration symbol, “®”, knowing that it does not have authorization from Plaintiff to use the mark.

34. Plaintiff has suffered harm from Defendant’s unauthorized use of the goBHB® trademark in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff’s public perception and goodwill.

SECOND CLAIM FOR RELIEF
False Advertising and Unfair Competition
15 U.S.C. § 1125(a)

35. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

36. Plaintiff owns rights in the federally registered goBHB® trademark (U.S. Trademark Reg. No. 5261845). *See Ex. A.*

37. Plaintiff is the owner of the goBHB® trademark by assignment.

38. Defendant uses the goBHB® trademark on the Slenderella KETONES product and its advertising, without authorization from Plaintiff:



SUPPLEMENT FACTS		
Serving Size: 1 Scoop (about 11.1 g)	AMOUNT PER SERVING	
Servings Per Container: About 30	%DAILY VALUE	
Calories	30	
Total Fat	1.5 g	2%†
Saturated Fat	1.5 g	8%†
Total Carbohydrate	2 g	1%†
Dietary Fiber	2 g	7%
Calcium (as goBHB® calcium beta-hydroxybutyrate)	385 MG	30%
Magnesium (as goBHB® magnesium beta-hydroxybutyrate)	50 MG	12%
Sodium (as goBHB® sodium beta-hydroxybutyrate)	385 MG	17%
goBHB® Calcium Beta-Hydroxybutyrate	2.5 g	..
goBHB® Sodium Beta-Hydroxybutyrate	2.25 g	..
Medium-Chain Triglycerides	1.5 g	..
goBHB® Magnesium Beta-Hydroxybutyrate	600 MG	..

† Percent Daily Values are based on a 2,000 calorie diet.
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<https://www.mswnutrition.com/pages/ketones>

OK, so this next one, you'll love this one: KETONES . . . So this is one of our newer ones . . . Beta-hydroxybutyrate, and then it's also Sodium, Magnesium, and Calcium versions of that. Okay, and then you've got your MCT [Medium-Chain Triglycerides] as well.

<https://www.youtube.com/watch?v=f7U86eQu4Dc> (time at 1:03:07)

39. Defendant's unauthorized use of the goBHB® mark is likely to confuse consumers, to cause mistake among consumers, and to deceive consumers into believing that Slenderella KETONES contains Plaintiff's branded ingredients, at least because Defendant uses the goBHB® mark in exactly the same manner, and on the same kinds of products, as Plaintiff and its licensees, and because Plaintiff's goBHB® mark is distinctive and famous in the health, wellness, and supplements industries.

40. Defendant's false advertising and unfair competition is willful at least because Defendant (1) repeatedly uses the full mark, exactly as registered, on its product label and advertising, (2) uses the mark for the precise class of goods for which it is registered (see Ex. A ("nutritional or dietary supplements in the nature of powder consisting of a beta hydroxybutyrate salt of either calcium, sodium, potassium or magnesium for use in food and dietary supplements

to increase blood ketone levels”)), and (3) even uses the trademark registration symbol, “®”, knowing that it does not have authorization from Plaintiff to use the mark.

41. Plaintiff has suffered harm from Defendant’s unfair competition in the form of lost profits, diverted sales and market share, and the weakening of Plaintiff’s public perception and goodwill.

THIRD CLAIM FOR RELIEF
Texas Deceptive Trade Practices Act
Tex. Bus. & Com. Code § 17.46 (2015)

42. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

43. Defendant’s conduct as described herein concerning false advertising and trademark infringement constitutes unfair, false, and deceptive acts and practices pursuant to Tex. Bus. & Com. Code § 17.46 (2015).

44. By using the goBHB® mark on its products and advertising, Defendant falsely passes off its goods as those of Plaintiff.

45. By using the goBHB® mark on its products and advertising, Defendant causes confusion and misunderstanding as to the source, sponsorship, approval, and/or certification of Slenderella KETONES.

46. By using the goBHB® mark on its products and advertising, Defendant causes confusion and misunderstanding as to as to an affiliation, connection, and/or association with Plaintiff.

47. By using the goBHB® mark on its products and advertising, Defendant falsely represents that Slenderella KETONES have sponsorship, approval, characteristics, ingredients, uses, and/or benefits which they do not have.

48. By using the goBHB® mark on its products and advertising, Defendant falsely represents that Slenderella KETONES are of a particular standard, quality, or grade, when they are of another.

49. By using the goBHB® mark on its products and advertising, Defendant falsely advertises Slenderella KETONES with intent not to sell them as advertised.

50. By using the goBHB® mark on its products and advertising, Defendant failed to disclose information concerning Slenderella KETONES which was known at the time of the transaction with a consumer, and such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

51. As a result of Defendant's unfair and deceptive trade practices, Plaintiff has suffered harm, including lost profits, diverted sales and market share, and the weakening of the public perception and goodwill of Plaintiff and its products.

FOURTH CLAIM FOR RELIEF
Patent Infringement – '952 Patent
35 U.S.C. §§ 1, *et seq.*

52. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

53. Plaintiff owns all patent rights in the '952 Patent.

54. The '952 Patent is valid, enforceable, and was issued in full compliance of the patent laws of the United States.

55. Plaintiff and its licensees have marked their products in accordance with 35 U.S.C. § 287(a).

56. Without license or authorization, Defendant makes, uses, offers for sale, and/or sells Slenderella KETONES containing compounds that infringe the '952 Patent.

57. On May 21, 2019, the '952 Patent, titled "Mixed Salt Compositions for Maintaining or Restoring Electrolyte Balance while Producing Elevated and Sustained Ketosis" was duly and legally issued. A true and correct copy of the '952 Patent is attached as Exhibit B.

58. Defendant makes, uses, offers for sale, sells, imports, and/or distributes Slenderella KETONES, which practices the inventions of at least representative claims 19 and 22 of the '952 Patent, without authorization from Plaintiff.

59. Slenderella KETONES infringes at least representative claim 19 of the '952 Patent in the manner described below:

19. A composition for maintaining or restoring electrolyte balance while promoting or sustaining ketosis in a mammal, the composition comprising:

a beta-hydroxybutyrate mixed salt formulated from a plurality of different cations and a single anion, wherein the single anion is beta-hydroxybutyrate, and wherein other anions are omitted from the beta-hydroxybutyrate mixed salt, the cations being formulated so as to provide a biologically balanced set of cationic electrolytes upon administration to a mammal,

the beta-hydroxybutyrate mixed salt comprising at least three salts selected from the group consisting of:

10-70% by weight of sodium beta-hydroxybutyrate;
10-70% by weight of potassium beta-hydroxybutyrate;
10-70% by weight of calcium beta-hydroxybutyrate; and
10-70% by weight of magnesium beta-hydroxybutyrate,

wherein the beta-hydroxybutyrate mixed salt is in solid and/or powder form.

Slenderella KETONES is a refreshing, easy-to-use powdered drink mix featuring mineral salts of beta-hydroxybutyrate (BHB) and medium-chain triglycerides. These ingredients provide direct carbohydrate-free fuel for the brain and muscles to support energy, performance, and focus.

- Provides Carbohydrate-Free Fuel for Muscles and Brain
- Helps Promote Ketosis
- Supports Energy, Performance, and Focus

Fuel/Energy Source - GoBHB is a patented and self-affirmed GRAS supplemental form of the BHB ketone body bound to mineral salts. It provides an exogenous source of ketones to help achieve ketosis without a ketogenic diet.

<https://web.archive.org/web/20201028052405/https://www.mswnutrition.com/products/slenderella-ketones>

SUPPLEMENT FACTS		
	AMOUNT PER SERVING	%DAILY VALUE
Calories	30	
Total Fat	1.5 g	2%†
Saturated Fat	1.5 g	8%†
Total Carbohydrate	2 g	1%†
Dietary Fiber	2 g	7%
Calcium (as goBHB® calcium beta-hydroxybutyrate)	385 MG	30%
Magnesium (as goBHB® magnesium beta-hydroxybutyrate)	50 MG	12%
Sodium (as goBHB® sodium beta-hydroxybutyrate)	385 MG	17%
goBHB® Calcium Beta-Hydroxybutyrate	2.5 g	**
goBHB® Sodium Beta-Hydroxybutyrate	2.25 g	**
Medium-Chain Triglycerides	1.5 g	**
goBHB® Magnesium Beta-Hydroxybutyrate	600 MG	**
† Percent Daily Values are based on a 2,000 calorie diet.		
** Daily Value not established.		
Other Ingredients: Gum acacia, citric acid, malic acid, silica, natural flavors (no MSG), stevia leaf extract, cellulose gum, xanthan gum, and sea salt.		

<https://www.mswnutrition.com/pages/ketones>

SUPPLEMENT FACTS		
Serving Size: 1 Scoop (about 11.1 g) Servings Per Container: About 30		
	AMOUNT PER SERVING	%DAILY VALUE
Calories	30	
Total Fat	1.5 g	2%†
Saturated Fat	1.5 g	8%†
Total Carbohydrate	2 g	1%†
Dietary Fiber	2 g	7%
Calcium (as goBHB® calcium beta-hydroxybutyrate)	385 MG	30%
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† Percent Daily Values are based on a 2,000 calorie diet.
** Daily Value not established.

Other Ingredients: Gum acacia, citric acid, malic acid, silica, natural flavors (no MSG), stevia leaf extract, cellulose gum, xanthan gum, and sea salt.

<https://www.mswnutrition.com/pages/ketones>

Slenderella KETONES is a refreshing, cucumber-lime-flavored, easy-to-use powdered drink mix featuring mineral salts of beta hydroxybutyrate (BHB) and medium-chain triglycerides.

<https://www.mswnutrition.com/pages/ketones>

60. Slenderella KETONES also infringes at least representative claim 22 of the '952

Patent in the manner described below:

22. The composition of claim 19, further comprising at least one medium chain fatty acid, or a mono- di- or triglyceride of the at least one medium chain fatty acid.

SUPPLEMENT FACTS		
Serving Size: 1 Scoop (about 11.1 g) Servings Per Container: About 30		
	AMOUNT PER SERVING	%DAILY VALUE
Calories	30	
Total Fat	1.5 g	2%†
Saturated Fat	1.5 g	8%†
Total Carbohydrate	2 g	1%†
Dietary Fiber	2 g	7%
Calcium (as goBHB® calcium beta-hydroxybutyrate)	385 MG	30%
Magnesium (as goBHB® magnesium beta-hydroxybutyrate)	50 MG	12%
Sodium (as goBHB® sodium beta-hydroxybutyrate)	385 MG	17%
goBHB® Calcium Beta-Hydroxybutyrate	2.5 g	**
goBHB® Sodium Beta-Hydroxybutyrate	2.25 g	**
Medium-Chain Triglycerides	1.5 g	**
goBHB® Magnesium Beta-Hydroxybutyrate	600 MG	**
† Percent Daily Values are based on a 2,000 calorie diet. ** Daily Value not established.		
Other Ingredients: Gum acacia, citric acid, malic acid, silica, natural flavors (no MSG), stevia leaf extract, cellulose gum, xanthan gum, and sea salt.		

<https://www.mswnutrition.com/pages/ketones>

61. Defendant has directly infringed representative claims 19 and 22 of the '952 Patent in the United States by making, using, offering for sale, selling, and/or importing Slenderella KETONES in violation of 35 U.S.C. § 271(a). As such, Defendant is liable for infringement of the '952 Patent under 35 U.S.C. § 271(a).

62. Defendant has indirectly infringed the '952 Patent in this District and elsewhere in the United States by inducing others to make, use, offer for sale, and/or sell Slenderella KETONES in violation of 35 U.S.C. § 271(b).

63. Defendant's infringement of the '952 Patent is knowing and willful and this case is exceptional, as evidenced by that fact that Defendant expressly acknowledges in its advertising that "GoBHB is a **patented** and self-affirmed GRAS supplemental form of the BHB ketone body bound to mineral salts," (<https://web.archive.org/web/20200815043832/https://www.mswnutrition.com/products/slenderella-ketones>), and yet lacks any authorization to use Plaintiff's

patented formula. Defendant also uses Plaintiff's registered goBHB® mark without authorization, and further uses the precise, patented formula of BHB protected by the '952 Patent that is found in legitimate products using goBHB®-branded ingredients.

64. Plaintiff has suffered harm as a result of Defendant's infringement of the '952 Patent, including in the form of lost profits and diverted sales and market share. Plaintiff is therefore entitled to recover damages sustained as a result of Defendant's wrongful acts in an amount to be proven at trial.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays that the Court enter judgment in its favor and award the following relief against Defendant:

- A. A judgment that Defendant infringed the '952 Patent directly and indirectly by inducement;
- B. A judgment that Defendant infringed Plaintiff's rights in the goBHB® mark;
- C. A judgment that Defendant falsely advertised Slenderella KETONES;
- D. A judgment that Defendant committed deceptive trade practices;
- E. A finding that the Defendant's conduct alleged herein was willful and that this case is exceptional;
- F. An order and judgment enjoining Defendant and its officers, directors, employees, agents, licensees, representatives, affiliates, related companies, servants, successors and assigns, and any and all persons acting in privity or in concert with any of them, from infringing Plaintiff's patents or trademarks or from falsely advertising any products;
- G. An award of actual damages in an amount to be determined at trial for patent infringement, trademark infringement, false advertising, and unfair and deceptive trade practices.

- H. Disgorgement of Defendant's profits associated with Defendant's trademark infringement and false advertising;
- I. Plaintiff's costs and attorneys' fees;
- J. A judgment for treble damages and other punitive damages;
- K. An order and judgment for Defendant to promulgate corrective advertising by the same media and with the same distribution and frequency as the false advertising for Slenderella KETONES;
- L. Any such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial on all matters triable to a jury.

DATED July 24, 2023.

Respectfully submitted,

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